

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:) WT DOCKET No.: 94-147
JAMES A. KAY, JR.)
Licensee of one hundred fifty)
two Part 90 licenses in the)
Los Angeles, California area.)

Room 1, Courtroom A-363
The Portals Building
445 12th Street, S.W.
Washington, D.C. (zip code)

Thursday,
January 14, 1999

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACKIN
Chief Administrative Law Judge

APPEARANCES:

On behalf of James A. Kay, Jr.:

AARON P. SHAINIS, ESQ.
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APPEARANCES (cont.):

On behalf of the Federal
Communications Commission:

JOHN J. SCHAUBLE, ESQ.
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Federal Communications Commission
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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Jeffrey Cohen	2204	2212			
Examination by Judge					
James P. Hanno	2220	2228	2260	2263	2221
Randolph French	2268	2277	2280		
Deborah Marshall	2282	2295	2303		
Anthony Marshall	2306	2317			

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>James J. Kay, Jr.:</u>			
63	2220	2228	

Hearing Began: 9:00 a.m.	Hearing Ended: 3:00 p.m.
Recess Began: 11:40 a.m.	Recess Ended: 2:00 p.m.

P R O C E E D I N G S

CHIEF JUDGE CHACKIN: Are there any matters you guys want to bring up or should we go to a witness?

MR. SHAINIS: Well, let me just say, Your Honor, Mr. Schauble had related to us that unfortunately Mr. Kellett has been in an automobile accident and he's not here today and would like to be present at the time of Mr. Kay's cross-examination. I assume, also, his direct examination?

MR. SCHAUBLE: Correct, Your Honor.

MR. SHAINIS: What we're willing to do, if Mr. Kellett is not prepared to be here tomorrow, to start Mr. Kay on Friday with cross. I guess tomorrow is Friday.

MR. SCHAUBLE: Your Honor, I anticipate that Mr. Knowles-Kellett will be here tomorrow.

CHIEF JUDGE CHACKIN: Then we have no problem. Apparently, Mr. Kellett was not injured, just the car was damaged, so there's no reason that he won't be able to be here tomorrow. So, we can proceed today.

Let's call the first witness.

MR. SHAINIS: Your Honor, I would like to call Mr. Jeffrey Cohen.

CHIEF JUDGE CHACKIN: All right, sir, would you raise your right hand?

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1 Whereupon,

2 JEFFREY COHEN

3 having been first duly sworn, was called as a witness
4 herein, and was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SHAINIS:

7 Q Mr. Cohen, could you state your full name for the
8 record?

9 A It's Jeffrey L. Cohen.

10 Q Could you state your residence address?

11 A 5545 Conogha Avenue, Number 104, Woodland Hills,
12 California 91367.

13 Q And, what is your occupation?

14 A I'm an attorney.

15 Q You're licensed to practice in what state?

16 A California.

17 Q Any other states?

18 A No.

19 Q How long have you been practicing law?

20 A Since 1988.

21 Q And, could you tell me how you know Mr. Kay?

22 Well, why don't you tell us if you do know James Kay?

23 A Yes, I do.

24 Q How did you become acquainted with him?

25 A Mr. Kay retained the firm I was working at as

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1 counsel.

2 Q What was the name of that firm?

3 A Mickelson and Padone. That's M-I-C-K-E-L-S-O-N
4 and Padone, P-A-D-O-N-E, as in Edward.

5 Q Are you still with that firm?

6 A No.

7 Q Does that firm still exist?

8 A No, it does not.

9 Q When did that firm cease to exist?

10 A December 31, 1998.

11 Q What firm are you currently with?

12 A Padone and Cohen.

13 Q When did you start representing Mr. Kay?

14 A Well, the firm, Mickelson and Padone, began
15 representing him and cases were assigned to me, I believe,
16 in 1991, 1992.

17 Q Were you the principal attorney in that firm
18 handling these matters for Mr. Kay?

19 A Yes.

20 Q And, how often, until January of 1994, how often
21 did you communicate with Mr. Kay?

22 A It would depend on the year that we were dealing
23 with, up until that point. In 1991, I believe there was
24 only one or two cases, so I would be dealing with him only
25 about once every two weeks, on average. In 1992, there were

1 more cases and probably they'd be on a weekly basis.
2 Starting in 1993, probably at least three times a week.
3 Towards the end of that year, almost on a daily basis.

4 Q You would usually communicate with him by phone,
5 is that correct?

6 A By phone more often than meeting in person, yes.

7 Q Did you have any meetings with Mr. Kay during the
8 year 1993?

9 A Yes.

10 Q How frequently did you meet with him?

11 A What part of the year?

12 Q Let's say the first quarter of the year?

13 A Maybe once every two weeks.

14 Q Second quarter?

15 A About the same.

16 Q Third quarter?

17 A Twice a week.

18 Q Fourth quarter?

19 A Meeting with him probably around twice a week.

20 Q Mr. Cohen, are you aware of an event that occurred
21 on January 17, 1994?

22 A Oh, boy, am I. Yes.

23 Q Would you relate what that event was?

24 A It was a serious earthquake, commonly called a
25 Northridge earthquake.

1 Q Did that earthquake affect your business?

2 A Well, it affected the firm, yes.

3 Q Do you know whether it affected Mr. Kay's
4 business?

5 A Yes, it did.

6 Q Just so the record is complete, could you tell us
7 what business Mr. Kay had at that time?

8 A He was operating two businesses, Lucky's Two-Way
9 radio and he had a corporation, Southland something.
10 Basically, was, I think, selling radios and also selling, I
11 believe, services regarding radio communications or
12 providing services. I'm not sure exactly right now.

13 Q I'd like you to describe, if you would, prior to
14 the date of the earthquake, how Mr. Kay functioned relative
15 to you, without violating any attorney-client privilege.
16 I'm not interested in that. Specifically what I'm referring
17 to is, in your day-to-day dealings with him?

18 A He was a fairly easy client to work with. He was
19 very focused on his business. He understood generally basic
20 legal issues. In my dealings with him, basically he would
21 consult with me regarding sometimes general business
22 problems, also the litigation I was representing him with.
23 He would talk about general options and other matters
24 dealing with that, and he would basically listen to what was
25 being presented, discuss the options, and then make the

1 decision based on those matters.

2 He was attentive, demanding, but basically fair to
3 deal with.

4 Q And, was he responsive to your requests?

5 A Almost always.

6 Q And, could you describe, subsequent to the
7 earthquake, what Mr. Kay was like?

8 A He changed quite a bit after the earthquake.
9 First of all, our office was shut down for six days after
10 the earthquake. We couldn't even get in for three days.
11 So, my communications with him didn't even start until about
12 ten days thereafter the earthquake had occurred.

13 At that point, he was shaken like all of us were
14 with the events, and having to deal with the changes. And,
15 he was much different than what he had been before in my
16 dealings with him.

17 Q Describe the differences, please?

18 A Well, to start off with, just the physical
19 presence. He was -- his skin pallor was different than what
20 it was before. He didn't look healthy. It appeared to me,
21 obviously, he wasn't sleeping very well or something else
22 was wrong. I had lunch with him on several occasions over
23 that month thereafter, and frankly, his eating habits were
24 atrocious. It was almost frightening to watch.

25 His ability to focus on matters was changed

1 considerably. Prior to that time, we had almost established
2 a pattern of how we dealt with any type of legal issue or
3 problem that arose and basically what I would do is give him
4 my view of what we thought was the legal issue and what I
5 thought his goal was, and then I'd give him the various
6 options and we'd discuss the ramifications.

7 Prior to the earthquake, that was a very effective
8 way of communicating and worked quite well. After the
9 earthquake, it was very hard to keep him focused on specific
10 legal issues and to get him to get a grip exactly on what
11 was being presented. Other matters as far as those issues
12 are concerned, was that he would not always -- prior to the
13 matter, he would concentrate quite well, and we were able to
14 effectively and quickly deal with legal issues.

15 Afterwards --

16 Q Prior to the --

17 A Prior to the earthquake.

18 Q Okay.

19 A After the earthquake, I had to work hard to keep
20 him where I wanted him to be and focusing on what issue had
21 to be resolved.

22 Q Did you observe changes in his physical
23 appearance?

24 A Well, other than the fact he wasn't cutting his
25 hair as often, he was wearing the same clothes and appeared

1 much more rumpled. He's never been any type of a
2 clotheshorse or fashion plate at all, but he was basically
3 slovenly in his appearance. Much differently than what it
4 was prior to that time.

5 Q Do you have an opinion as to the cause of this
6 change?

7 A Well, I viewed as being depressed, probably as a
8 result, basically, of having to deal with what happened with
9 the earthquake. I mean, people who weren't there don't
10 understand the devastation to businesses that occurred,
11 arising out of it.

12 Q Do you have any knowledge as to the damage done by
13 the earthquake to --

14 MR. SCHAUBLE: I'm sorry, I didn't hear the last
15 part of the question.

16 BY MR. SHAINIS:

17 Q Okay, do you have any knowledge as to the damage
18 that was done? Did you observe any of the damage that was
19 done to Mr. Kay's businesses by the earthquake?

20 A The physical presence?

21 Q Yes?

22 A At his main office?

23 Q Yes?

24 A No.

25 Q Did Mr. Kay describe to you the damage?

1 A Yes, he did.

2 MR. SCHAUBLE: Objection, hearsay.

3 CHIEF JUDGE CHACKIN: Well, Mr. Kay will be here.
4 I'll overrule the objection.

5 BY MR. SHAINIS:

6 Q And, what did he tell you?

7 A He basically said that his business had been
8 turned upside down. I had been to his business prior to the
9 earthquake and seen things. He basically said all of it was
10 destroyed, that the back room, everything, was all dumped
11 over onto the ground, that he wasn't even sure that the
12 building was still structurally sound.

13 You should be aware that his business location
14 probably was within maybe five to six miles of the epicenter
15 of the earthquake, so within probably five miles of where he
16 was was the Northridge Fashion Center, which was completely
17 destroyed. I mean, it fell down. He was quite close to
18 where the worst part of the damage was, yes.

19 MR. SHAINIS: One moment, Your Honor.

20 (Pause.)

21 BY MR. SHAINIS:

22 Q Mr. Cohen, what you described as far as Mr. Kay's
23 physical appearance and, for lack of a better word, his
24 state of mind at the time, how long did that go on
25 subsequently over the years?

1 A Well, during -- until the time the firm ceased
2 representing him, he was never back to what he was prior to
3 the earthquake.

4 Q The firm ceased representing him when?

5 A I am not sure whether it was late 1995 or early
6 1996, but sometime in that time period.

7 Q Was there any recovery during that period of time?

8 A Yes, as far as his business acumen, he was able to
9 concentrate. The farther he got away from the earthquake,
10 the better he was, yes.

11 MR. SHAINIS: No further questions.

12 CHIEF JUDGE CHACKIN: Any cross?

13 MR. SCHAUBLE: A little bit, Your Honor, if we
14 could just have one minute.

15 CHIEF JUDGE CHACKIN: Okay.

16 (Pause.)

17 MR. SCHAUBLE: Your Honor, I'm ready.

18 CHIEF JUDGE CHACKIN: Yes, go ahead.

19 CROSS-EXAMINATION

20 BY MR. SCHAUBLE:

21 Q Good morning, Mr. Cohen.

22 A Good morning.

23 Q You testified that you believed that Mr. Kay was
24 depressed. That's just your lay opinion, not a medical
25 opinion, correct?

1 A That's correct.

2 Q You're aware, are you not, that early in 1994, Mr.
3 Kay received a letter of inquiry from the Federal
4 Communications Commission?

5 MR. SHAINIS: Objection, beyond the scope of the
6 direct.

7 CHIEF JUDGE CHACKIN: Overruled.

8 THE WITNESS: Yes.

9 BY MR. SCHAUBLE:

10 Q And, you're aware that Brown and Schwaninger was
11 representing Mr. Kay before the FCC at that time, correct?

12 MR. SHAINIS: Objection, beyond the scope of the
13 direct.

14 CHIEF JUDGE CHACKIN: Overruled. You brought up
15 the question that his condition only shows state of mind.
16 Now we're talking about 1994, so I'll overrule your
17 objection.

18 THE WITNESS: Yes.

19 BY MR. SCHAUBLE:

20 Q And, is it correct that, in about three or four
21 instances, you participated in conference calls or meetings
22 including both Kay and representatives of Brown and
23 Schwaninger, correct?

24 A As far as conference calls, yes.

25 Q Were you ever present in a meeting with yourself,

1 Mr. Kay and Brown and Schwaninger?

2 A No.

3 Q Other than those conference calls, do you have any
4 knowledge concerning the frequency with which Mr. Kay was
5 communicating with Brown and Schwaninger?

6 A Not really, no.

7 Q Do you have any knowledge concerning any
8 difficulties Brown and Schwaninger may have had in
9 communicating with or relating to Mr. Kay?

10 A Only in things that occurred during the telephone
11 calls.

12 Q Do you recall anything in those telephone
13 conversations?

14 A I think that would be matters protected by the
15 attorney-client privilege. Yes, I recall them, but I don't
16 know whether I would testify to them.

17 MR. SCHAUBLE: Your Honor --

18 CHIEF JUDGE CHACKIN: If you want him to testify
19 about specific matters, I will not permit it unless the
20 client agrees to waive attorney-client privilege.

21 If you want to deal with generally how he acted
22 and behaved, stuff like that, that's fine. If you're going
23 to get into specific matters, I'm going to sustain the
24 objection. I'm not going to permit you to ask a question
25 about specific matters that involves attorney-client

1 privilege, and there were no questions put forth to this
2 witness in which there's any breach of attorney-client
3 privilege.

4 You can talk about his general condition, you can
5 talk about his demeanor, whatever, but I'm not going to
6 permit you to ask questions, specific questions about what
7 took place during these conversations.

8 MR. SCHAUBLE: Your Honor, it's certainly Mr.
9 Kay's right to invoke the privilege, but I question the
10 worth with his testimony in the absence of specifics.

11 CHIEF JUDGE CHACKIN: Well, it depends what
12 specifics you ask. If you're going to ask about what took
13 place during attorney-client meetings. That's improper, I'm
14 not going to permit it. In the first place, it's
15 irrelevant. This witness didn't testify about any
16 substantive conversations. He gave his general impression
17 of Mr. Kay and things that Mr. Kay told him about how his
18 building, his business, had been affected by the earthquake.
19 That doesn't give you the right to launch into inquiries
20 concerning conversations, the specifics of conversations
21 between the attorney and Mr. Kay and his lawyer.

22 BY MR. SCHAUBLE:

23 Q Let me ask you this question, Mr. Cohen. During
24 these conference calls with yourself, Mr. Kay and Brown and
25 Schwaninger, do you recall specifically any examples of Mr.

1 Kay appearing to be distracted or unable to focus?

2 A Yes.

3 Q Without breaching confidential communications, can
4 you provide any further information concerning that example?

5 A I believe part of the reason why I was involved in
6 those conversations was Mr. Kay was having difficulty
7 understanding the legal ramifications of what was occurring.
8 That arose, I think, from his inability to stay on the
9 focused matter.

10 Q Were you told that by someone?

11 A No.

12 CHIEF JUDGE CHACKIN: This is your lay opinion
13 about Mr. Kay's condition?

14 THE WITNESS: That's correct.

15 CHIEF JUDGE CHACKIN: As far as I know, we have no
16 medical evidence in this record showing that Mr. Kay was
17 clinically depressed or anything of that nature. Go ahead,
18 counsel.

19 BY MR. SCHAUBLE:

20 Q Mr. Cohen, do you recall when these conversations
21 took place?

22 A The exact dates, no.

23 Q Do you know what month or months they took in?

24 A I believe they occurred over the course of 1994.
25 I don't recall the exact months.

1 MR. SCHAUBLE: No further questions, Your Honor.

2 EXAMINATION BY JUDGE CHACKIN

3 CHIEF JUDGE CHACKIN: You testified that Mr. Kay
4 provided you some information about the damage to the
5 business. Could you be more specific as to what information
6 he reported to you about how his business was affected by
7 the earthquake?

8 THE WITNESS: Well, Your Honor, it was common --

9 CHIEF JUDGE CHACKIN: I recognize -- well, go
10 ahead.

11 THE WITNESS: What occurred, basically, it was
12 common for things to occur between business people and
13 everyone, to discuss what happened after the earthquake --
14 what walls fell down, what light fixtures hit the ground,
15 what cases happened. In my first conversation with Mr. Kay
16 after the earthquake, I said, well, how is your business?
17 And he told me.

18 CHIEF JUDGE CHACKIN: What did he say?

19 THE WITNESS: He said, basically, the business is
20 almost destroyed and everything was -- I believe his words
21 were, it looked like somebody's gone in there with an
22 eggbeater and turned everything around.

23 CHIEF JUDGE CHACKIN: Do you have any information
24 as to whenever his business, well, business itself was
25 reconstructed, in terms of the damage having been taken care

1 of, whatever?

2 THE WITNESS: I could only testify as to the front
3 area and the general office. I went there sometime, I
4 think, in late '94 and his display cases were back up and
5 the general sales area was back and running. I couldn't
6 testify as to what happened in the back. The building
7 appeared to be in fairly decent shape at that point.

8 CHIEF JUDGE CHACKIN: So, was that the only visit
9 at the time of the earthquake in 1994 that you made to the
10 building?

11 THE WITNESS: It's the only time that I went
12 inside.

13 CHIEF JUDGE CHACKIN: You were inside the
14 building?

15 THE WITNESS: Yeah, I was inside the building at
16 that time. I had driven over there and met him and picked
17 him up.

18 CHIEF JUDGE CHACKIN: When was this?

19 THE WITNESS: That would probably be in 1995 when
20 I went to go pick him up. I don't know which month -- late
21 '94, I think I was at the premises.

22 CHIEF JUDGE CHACKIN: What did you observe in
23 terms of anything else inside, in terms of files and things
24 of that nature?

25 THE WITNESS: No, not at that -- by the time I got

1 there, the front sales area had been cleared up, I believe.
2 The display cases had been restored, and that was the only
3 part of the building that I was in.

4 CHIEF JUDGE CHACKIN: Any redirect?

5 MR. SHAINIS: No, Your Honor.

6 CHIEF JUDGE CHACKIN: You're excused. Thank you.

7 THE WITNESS: Thank you, Your Honor.

8 (Witness excused.)

9 CHIEF JUDGE CHACKIN: You have other witnesses?

10 MR. SHAINIS: Yes, Your Honor.

11 MR. SCHAUBLE: Your Honor, could I have just a
12 two-minute break just before --

13 CHIEF JUDGE CHACKIN: Absolutely.

14 (Whereupon, a short recess was taken.)

15 CHIEF JUDGE CHACKIN: Back on the record.

16 MR. KELLER: Your Honor, I neglected to have this
17 pretrial testimony of Mr. Hanno, neglected to have a
18 declaration under oath executed, but since he's going to be
19 here to adopt the testimony in person, I don't know that
20 that matters. But, I'm certainly willing to provide it
21 later, if you wish.

22 CHIEF JUDGE CHACKIN: So, since the witness is
23 here --

24 MR. KELLER: I'll just ask him a brief series of
25 questions to have him adopt this as true and accurate.

1 CHIEF JUDGE CHACKIN: Before we do that, would you
2 please rise and raise your right hand?

3 Whereupon,

4 JAMES P. HANNO
5 having been first duly sworn, was called as a witness
6 herein, and was examined and testified as follows:

7 MR. KELLER: Your Honor, I have provided to the
8 court reporter two copies of the document being marked as
9 Kay Exhibit 63, which is the document bearing the caption of
10 this case, entitled "Testimony of James P. Hanno". It is a
11 five-page, double-spaced document and previously exchanged,
12 I believe, on January 5 and I ask that it be marked for
13 identification.

14 CHIEF JUDGE CHACKIN: The document described will
15 be so marked.

16 (The document referred to was
17 marked for identification as
18 Kay Exhibit 63.)

19 DIRECT EXAMINATION

20 BY MR. KELLER:

21 Q Mr. Hanno, would you please state your full name
22 for the record, please?

23 A James Peter Hanno.

24 Q Do you have a copy in front of you of what has
25 been marked for identification as Kay Exhibit 63?

1 A Yes.

2 Q Are you familiar with the contents of this
3 document?

4 A Yes.

5 Q Did you assist in its preparation?

6 A Yes.

7 Q Have you, since it's been finally prepared, have
8 you had the opportunity to review it carefully?

9 A Yes.

10 Q Do you have any corrections to it?

11 A None that I had found yet.

12 Q If I were to ask you questions regarding the
13 subject matter today, would you testify the same as is in
14 here?

15 A Yes.

16 Q So, this document is true and correct to the best
17 of your personal knowledge?

18 A Yes.

19 MR. KELLER: Your Honor, I move the admission of
20 Kay Exhibit 63?

21 CHIEF JUDGE CHACKIN: Any objection?

22 MR. SCHAUBLE: Your Honor, could I have some voir
23 dire on this?

24 CHIEF JUDGE CHACKIN: Yes, yes, you may.

25 VOIR DIRE EXAMINATION

1 BY MR. SCHAUBLE:

2 Q Good morning, Mr. Hanno.

3 A Good morning.

4 Q Turn to paragraph ten of the document, which
5 starts on the bottom of page three and goes to page four.

6 A Yes.

7 Q Do you see that that paragraph contains certain
8 information regarding Mr. Kay's records and practices on the
9 construction and maintenance of the --

10 A Are you talking about on number 11, there, you
11 mean?

12 Q Paragraph ten, at the bottom of page three. It
13 goes on to page four.

14 MR. KELLER: Excuse me, Mr. Schauble. If anybody
15 has in front of them a copy that I previously exchanged, it
16 might be that pages three and four are out of order. The
17 copy I handed out this morning is in the correct order.

18 MR. SCHAUBLE: Okay.

19 CHIEF JUDGE CHACKIN: What paragraph do you want
20 him to look at?

21 MR. SCHAUBLE: Ten, Your Honor.

22 CHIEF JUDGE CHACKIN: What is the purpose of this?
23 Qualifying questions, or is this cross-examination?

24 MR. SCHAUBLE: This is qualifying, Your Honor.

25 CHIEF JUDGE CHACKIN: You're not questioning his

1 expertise?

2 MR. SCHAUBLE: Well, the question I want to ask,
3 Your Honor, is what is the basis for --

4 BY MR. SCHAUBLE:

5 Q Let me ask this, Mr. Hanno. Do you have personal
6 knowledge of the matters contained in paragraph ten?

7 A Yes. I visited James Kay's location and some of
8 the questions I asked, as far as just a repair operation,
9 that type of thing and inventory, and from my notes, these
10 are what I had, or from my questions, this is the
11 information they had given me, and it looks like it's
12 standard procedure within any type of repair service
13 business.

14 Q Did you personally review Mr. Kay's records
15 relating to the construction and maintenance of the
16 repeaters?

17 A No, I did not go through the records themselves.
18 I did talk to their people and I talked to James Kay, and
19 they explained to me how they went through their process of
20 doing the work.

21 Q So, this information is based on information you
22 were told by Mr. Kay or his employees, correct?

23 A Correct. I went through their inventory of
24 equipment, and I could see that they had some new equipment
25 there and some used, and as I asked the questions, they

1 showed me what they had done and how they did it.

2 Q Did you ever observe Mr. Kay or any of his
3 personnel testing any of this equipment?

4 A When I went through their place of business, their
5 employees were working on different pieces of equipment for
6 the two days that I was there. I didn't write down the
7 serial number or model number of the particular piece of
8 equipment they were working on. I didn't want to interrupt
9 their flow of business.

10 Q Mr. Hanno, turn to paragraph 12 on page five.

11 A Yes.

12 Q Did you ever observe any such equipment, the
13 equipment described of this type in Mr. Kay's office?

14 A Are you referring to the EZ-Link or the Net Link
15 equipment?

16 Q Yes.

17 A No, I did not.

18 Q Okay.

19 A It may have been there, but I didn't go through
20 every box and I think it was -- we went through three, four
21 different rooms and there was equipment, there was inventory
22 that was stacked, waiting to be used, repaired and
23 replacement, that type of thing.

24 I know that he had purchased this type of
25 equipment, because we had met through the company that had

1 sold him this equipment. It was a company that had referred
2 me to James Kay to do some work for him.

3 Q Do you have any personal knowledge as to whether
4 Mr. Kay, in fact, ever operated equipment of this type?

5 A He described it in his business operation of how
6 it worked, but I did not go out to the tower site and
7 physically inventory the equipment. No, I did not.

8 Q Okay. Do you have any information as to the
9 parameters under which such equipment would operate, such as
10 the power or frequency?

11 A Well, the power can vary, depending on the
12 particular transmitter that you use with the piece of
13 equipment. Basically what it does is, it extends --

14 Q My question is --

15 CHIEF JUDGE CHACKIN: Finish your response.

16 THE WITNESS: Okay, basically what you try to use
17 this for is, you know, there's a lot of businesses that
18 don't have unlimited funds and they need a wide area
19 coverage of communications.

20 They take this piece of equipment and use it,
21 based on the ID code or group call number, and to allow it
22 to extend it to another site, to operate off of another
23 site. And, it's widely used and, from what I understand,
24 has been accepted by the FCC as being okay to use.

25 BY MR. SCHAUBLE:

1 Q My question, Mr. Hanno, is do you have any
2 personal knowledge as to where Mr. Kay would operate such
3 equipment?

4 A He could use it between any two sites that he
5 wants to extend the coverage for his clients.

6 Q But, do you know if that's where Mr. Kay --

7 A I did not go out and actually inventory the
8 equipment, no.

9 MR. SCHAUBLE: Your Honor, I move to strike
10 paragraph 12.

11 CHIEF JUDGE CHACKIN: On what basis? We're still
12 going to hear about the nature of the equipment. It's
13 undisputed that Kay has this equipment. He's telling what
14 he knows about the equipment as an expert, so what's the
15 basis of striking it? The fact he didn't see it in action
16 and go out to the actual site, how does that affect what
17 he's saying here about the equipment is commonly used in the
18 industry and the purpose of equipment. I don't understand
19 how that's a basis for objection. He's an expert. He has
20 common knowledge of the equipment.

21 MR. SCHAUBLE: Your Honor, he doesn't have
22 knowledge as to how Mr. Kay is specifically using this
23 equipment.

24 CHIEF JUDGE CHACKIN: He can still testify how the
25 equipment is used commonly in the industry.

1 MR. KELLER: Your Honor, we're not offering this
2 witness for information on how Mr. Kay used the equipment.
3 There is information from witness Paul Oei and there's
4 already some information about the link James Kay was
5 sending with the other testimony about James Kay's
6 equipment. There's certainly a contention by the Bureau,
7 the operation of the equipment somehow constitutes evidence
8 of harmful and malicious interference.

9 The sole purpose of this witness's testimony in
10 paragraph 12 is to provide some edification as to the nature
11 of the equipment that's used in the industry. As far as the
12 matters Mr. Schauble is concerned about, those are matters
13 that should be addressed to Mr. Oei or Mr. Kay. It's
14 certainly proper for us to offer background and testimony
15 about what the equipment is and what purpose it is used for,
16 in general. That's all this paragraph 12 is offered for.

17 CHIEF JUDGE CHACKIN: The objection is overruled.
18 Anything else?

19 MR. SCHAUBLE: Your Honor, I think we can proceed
20 to cross-examination.

21 CHIEF JUDGE CHACKIN: You had no further
22 questions, Mr. Keller, of this witness?

23 MR. KELLER: No.

24 CHIEF JUDGE CHACKIN: All right, go ahead.

25 MR. SHAINIS: Your Honor, I believe Mr. Keller

1 asked that the exhibit be admitted.

2 CHIEF JUDGE CHACKIN: Do you have any objection to
3 its receipt in evidence?

4 MR. SCHAUBLE: Other than -- just that that I
5 previously stated, Your Honor.

6 CHIEF JUDGE CHACKIN: All right, Kay Exhibit 63 is
7 received. Go ahead, Mr. Schauble.

8 (The document referred to,
9 having been previously marked
10 for identification as Kay
11 Exhibit 63, was received in
12 evidence.)

13 CROSS-EXAMINATION

14 BY MR. SCHAUBLE:

15 Q Mr. Hanno, turning to paragraph two of your
16 testimony --

17 A Yes.

18 Q -- is it correct that that testimony, there's four
19 different companies that you owned and operated from 1980 to
20 1987, correct?

21 A Yes.

22 Q Is it correct that none of those companies ever
23 held an SMR license, correct?

24 A Correct.

25 Q None of those companies ever held a business radio

1 license, correct?

2 A They did. The one, LaCrosse Communications, did.

3 Q Do you recall how many licenses it held?

4 A One.

5 Q Was this for the internal use of the company, or
6 was this used to provide repeater service to others?

7 A Internal use of the company.

8 Q Now, turning to paragraph three, is it correct
9 that at Ericsson, you did not have the opportunity to review
10 the business record keeping of your customers?

11 A Since I come from the country, a lot of people put
12 a lot of faith and confidence in me. Some of my clients
13 would ask me about billing packages or software packages and
14 I, as a company for Ericsson, did not sell them, but a lot
15 of my clients did. So, as a service to them, I tried to
16 stay up on it as much as possible and direct them to other
17 companies.

18 They would show me what they would do from time to
19 time. Obviously, people like Southern California Edison or
20 San Diego Gas & Electric, obviously theirs are internal and
21 confidential. For the Government work that I did, they did
22 not, but the individual operator, sometimes, or business
23 radio people I dealt with, did.

24 Q So, you're saying that you did review your
25 business record keeping of customers while working at

1 Ericsson?

2 A Well, some of my clients would go through it with
3 me. It was not my responsibility, but they would ask me the
4 questions and I would do as much as I could to help them at
5 the time.

6 Q Mr. Hanno, do you recall being deposed in this
7 proceeding?

8 A Yes, I do.

9 Q It was on May 5, 1998, in Washington, D.C.?

10 A Yes.

11 Q Page 18, of the deposition, Your Honor, beginning
12 at line 22. Question, "Now, at your job at Ericsson, did
13 you have any opportunity to review any business record
14 keeping of customers?" Answer, "No."

15 A I think in the context here, we were talking
16 about, in this specific one, as far as the actual billing
17 packages that I would refer people to, okay. As far as
18 their record keeping for their internal inventories and
19 things, no. I think there's a difference between
20 inventories and accounting. Are you wanting to understand
21 between accounting or inventory records?

22 I mean, you know, like when I worked with Camp
23 Pendelton for the Marine Corps, they wouldn't show me the
24 records. Or, Navy Security, Miramar, that type of thing,
25 no, they would not show me the records. But, specific

1 businesses, yes, I would work with them on those. I would
2 refer to it. It was not something I sold, but I normally
3 would refer them to individual companies where we would talk
4 about and review it.

5 Again, it depends on the context of the question
6 you're asking me.

7 Q Okay.

8 A Which are you more concerned about, inventory or
9 business accounting records?

10 Q Okay, did you have an opportunity to review
11 business accounting records? Which type of records did you
12 have an opportunity to review?

13 A With some of the clients, I would work with some
14 of the business accounting records that they had, okay, for
15 limited numbers of clients, obviously. When I worked with
16 Pendleton, I didn't use -- they had none. Obviously,
17 they're not billing for it, or the Navy or the Marines or
18 Army, Air Force, none of those people did. Or, the electric
19 utilities.

20 But, if I work with an SMR operator or those type
21 of people, then they would talk about billing, because
22 obviously, it's a problem for everybody, you know. They're
23 always wanting to do something better and easier. I would
24 try to stay out of it as much as I could, but obviously my
25 people would come to me and I would tell them what I would

1 hear or learn at the conventions, that type of thing, or
2 referrals from other people.

3 Q Okay, turn to paragraph four, Mr. Hanno.
4 Approximately how many consulting clients have you had since
5 1992?

6 A I guess that's a good question. I would only have
7 to be able to guess and say probably 40.

8 Q And --

9 A I have one client that I built 20 different sites
10 for, so it's kind of hard to, you know --

11 Q Describe generally what sort of services you
12 provide to those clients?

13 A It would vary, depending on the nature of their
14 experience. Most of them -- I never did any advertising of
15 my services. Most of mine came from referrals from
16 companies.

17 Someone would call up a company and say, I have a
18 license, I need to put up a system and probably within four
19 or five questions from the clients of the company, they'd
20 realize they didn't know what they were doing. They would
21 call me, I'd do a referral, or if there was a specific
22 problem. So, a lot of it was word of mouth. So, it was
23 anywhere from building a company from start to finish or
24 specifically going in and redesigning a company where they
25 had, they'd done it themselves and they had problems and it

1 wasn't giving them the coverage or services like that. Did
2 some secure work for clients, things like that. It kind of
3 varied quite a bit.

4 Q You're talking practices not limited to billing
5 records and billing programs, correct?

6 A No, it is not.

7 Q You state here that the vast majority of your
8 communications consulting clients were in the land mobile
9 radio industry. Just for the record, would you please
10 describe what services you encompass within the term "land
11 mobile radio industry"?

12 A SMR operators, project I'm going on right now for
13 Westland University, for a radiation problem. Done some
14 utility work. Secure Government work. Anybody that would
15 have a license or outside the country concession to build
16 a -- the majority of it was for-profit type systems. It was
17 where they were using the systems to try and make money
18 providing service to their clients.

19 Q Would you include paging within the term "land
20 mobile"?

21 A Not necessarily, but I've done paging work. I
22 mean, I had three of my own paging companies. That was an
23 easy one.

24 Q Now, you were not a member of the American Mobile
25 Telephone Association, correct?

1 A No, I am not.

2 Q How many meetings of the International
3 Telecommunications Union have you attended?

4 A One.

5 Q When was that?

6 A That was in Rio de Janeiro and that was in 1997.
7 I was trying to take my business to another level.

8 Q Now, paragraph five here, you state, "I would
9 estimate that I have personally reviewed and/or assisted in
10 the development of business management systems, including
11 billing and record keeping functions." What other functions
12 or systems do you include within the term "business
13 management systems"?

14 A We talk about pricing. We talk about possibly
15 commissions, agent relationships, how they can develop their
16 businesses. Obviously, these people that have licenses are
17 entrusted licenses by the Government to provide a service to
18 their clients. The idea is that it's a mutual thing. We
19 give you a license, you can make some money for it, but you
20 provide a service to the American public.

21 Q Turn to page three, Mr. Hanno. The first sentence
22 is, "Mr. Kay's billing system and custom design data base
23 application." Then it goes on, "It is more common for
24 small SMRs to use off the shelf software packages." First
25 of all, by a small SMR, you're referring to a small SMR

1 operator or company, correct?

2 A Correct.

3 Q How would you define a small SMR company?

4 A Well, it depends on the number of size -- most
5 companies do not want to try and spend the thousands of
6 dollars it takes to build a custom design software package.
7 And, so there are some off the shelf softwares, no different
8 than --

9 Q Excuse me. My question was, what is a small SMR
10 operator under your definition?

11 A I think if you take out the top four or five
12 companies, you know, Nextell used to be -- PCI, which is now
13 gone, Nextell bought them. Basically, the only thing that's
14 left is either Nextell or smaller SMR operators, because
15 probably everybody else other than Nextell, you know,
16 basically someone that is providing service within a region
17 or even maybe where I live. I live around the corner of
18 Iowa, Minnesota and Wisconsin. I would say that would be a
19 tri-state area. I would be a small operator.

20 Q Okay.

21 A You know, there are no big ones left. Nextell or
22 the small ones.

23 Q Okay. Going on in the paragraph, "There are also
24 more expensive software packages for larger systems." For
25 the purpose of that sentence, did you just mean Nextell, or

1 would you include other companies within the --

2 A There are other companies that could get into it.
3 Again, they have to have the revenue to be able to afford
4 packages. There's a package out of, I think it's Omaha,
5 Nebraska, that's somewhere in the \$20,000 to \$25,000 range,
6 compared to another package from IDA is like \$1,000 by the
7 time you get done. There's another one that I'm aware of
8 that's about \$2,500. Of course, they since, I think, now
9 have gone out of business, as well.

10 Q Okay. At the end of paragraph seven, Mr. Hanno,
11 you state, "In my opinion, the system used by Mr. Kay has
12 more extensive capabilities than any of the off the shelf
13 billing packages designed for small SMR operators." In what
14 way is Mr. Kay's package, are the capabilities of Mr. Kay's
15 package more extensive?

16 A He has a unique situation where he has to more or
17 less do double accounting. He has some sites that he rents
18 from the Forest Service, and so he has to track that
19 separately. So, it's almost like running -- not quite like
20 two billing packages -- but, in essence, it is, and he has
21 to track that information separately. Because, up until
22 recently, he was paying them a percentage of his income, so
23 he had to do that differently than -- most other operators
24 don't use Forest Service sites. It's not necessarily easy
25 dealing with the Forest Service, so a lot of them, if at all

1 humanly possible, they try to stay away from it.

2 In the Los Angeles area, the mountaintops are
3 controlled by the state and federal Government in many
4 situations, so you have to do what you have to do to survive
5 as a business.

6 CHIEF JUDGE CHACKIN: What did you mean, in what
7 ways has it more extensive capabilities?

8 THE WITNESS: Because of the double accounting
9 part of it. In other words, he has to do it -- first off,
10 he has to be able to collect his revenue to make sure his
11 company survives, okay. That's everybody's number one
12 concern, but then also, he has to have the ability to show,
13 separate the income for specific sites for the Forest
14 Service, and that's why it was done on a custom basis, to
15 help him -- make it a little bit easier for him to track his
16 income with the Forest Services.

17 CHIEF JUDGE CHACKIN: And, in contrast, when you
18 talk about other offices, those packages, the small SMR
19 operators, what are they capable of doing?

20 THE WITNESS: Well, they can put up different rate
21 schedules, as far as -- I don't want to say that a lot of
22 them are "Let's Make a Deal" type things. In other words,
23 your company may have 20 mobiles and you may pay \$8. I have
24 ten mobiles, I may pay \$10. So there are variances for
25 that.

1 Then there's also, depending on whether there is
2 interconnect, telephone interconnect, there is, that will
3 vary. And, then you have to charge so much a minute for
4 telephone air time, things like that. So, that's where
5 those new variances come in.

6 BY MR. SCHAUBLE:

7 Q Is there any other way, Mr. Hanno, in which the
8 capabilities of Mr. Kay's program is more extensive than
9 these off the shelf billing packages?

10 A I spent about two days going in and out of it. Of
11 course, it's hard to pick up a package and just look at it.
12 I would say that that was probably the main thing that it
13 was. It was the ability to show some of the
14 differentiations for the Forest Service. Because of the
15 proximity and the terrain in the Los Angeles area, the other
16 thing he had to get into was the number of sites. A lot of
17 companies may have more than one site.

18 Come out where I live, and you're probably only
19 going to be on one site. In other words, you have to look
20 at how the businesses themselves operate. He has people
21 there that are on -- a number of them I saw were on as many
22 as three different sites. And, from there, then, of course,
23 maybe only one of those three sites might have been Forest
24 Service, so it was -- and they wanted a percentage of the
25 income up until recently.

1 Q You mean, the Forest Service wanted a percentage
2 of the income up until recently?

3 A Correct, that was their way of charging for use of
4 their tower site.

5 Q Now, in paragraph eight, that talks about how with
6 Mr. Kay's billing system it is not possible to reconstruct a
7 snapshot of system loading. And, then you say, first, the
8 system -- referring to Mr. Kay's system -- is not designed
9 primarily for system maintenance and loading, but rather for
10 billing, correct?

11 A Correct.

12 Q That's based upon your observation of the system?

13 A Correct. And, again, I spent two days at it. I
14 was trying to look at it from several different ways, but
15 that's pretty much standard in the industry. Most of the
16 record keeping is designed for billing and the income.
17 These operators are -- they've got to make sure that money
18 comes in so they survive.

19 Q Okay.

20 A So, that's normal billing or accounting practices
21 is what their number one concern is.

22 Q Okay, are you familiar with what type of records
23 SMR operators keep for purposes of system maintenance?

24 A Various. Again, that's not my specific area of
25 expertise, but I do review it with people from time to time.